A Publication of
Legislative Services Division

THE INTERIM

JANUARY 1998 HELENA, MONTANA VOL. XI NO. 8

LEGISLATOR PER DIEM PAYMENTS -- TAX CONSIDERATIONS

This information is intended to assist legislators and their tax preparers in handling legislative per diem payments. Legislators should consult with their income tax preparers for specific requirements relating to individual circumstances.

GENERAL RULES

All legislator per diem payments made to legislators living more than 50 miles from the Capitol building are reimbursements made under an accountable plan, are not taxable income of the legislator, and are not subject to withholding or reporting. The difference between the per diem paid and the amount allowed by federal law for reimbursement is treated as unreimbursed expenses and, subject to certain limitations, is allowed as a miscellaneous items deduction by the legislator.

Legislator per diem payments made to legislators who do not live in Helena but who live within 50 miles of the Capitol building are not substantiated reimbursements and are thus reported as income. Withholding is made against these payments. All legislative lodging and meal expenses actually incurred by the legislator are unreimbursed expenses and, subject to certain limitations, may be a miscellaneous items deduction by the legislator.

Legislator per diem payments made to legislators who reside in Helena are reported as income and are subject to withholding. The legislator may not claim meal and lodging expenses incurred in Helena.

DISCUSSION

Accountable Plan

All legislator per diem payments made to a legislator whose home is more than 50 miles from the Capitol building are employee reimbursements under an accountable plan for the following reasons:

(1) IRC section 162(h) eliminates requirements for a legislator to substantiate an overnight stay.

(2) The per diem payment to legislators is $70 per legislative day, set according to 5-2-301(4), MCA. Federal law provides one type of accountable plan for when the employee's "lodging plus meals and incidental expenses" per diem reimbursement is less than the amount computed for the federal per diem rate. (IRC section 62(a)(1)(A), 26 CFR 1.62-2) For Montana, the applicable reimbursement rate, set forth in 41 CFR Ch. 301 App. A, is $80--$50 for lodging and $30 for meals and incidental expenses.

Reimbursements paid "under an accountable plan are excluded from the employee's gross income, are not reported as wages or other compensation on the employee's Form W-2, and are exempt from the withholding and payment of employment taxes (Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA)...)". (26 CFR 1.62-2(c)(4)) Therefore, all legislators living more than 50 miles from the Capitol building do not have their per diem payments reported on their W-2 Forms.

Under 26 USC 162(h)(4), the special provisions allowing use of the federal per diem rate do not apply to legislators living within 50 miles of the Capitol building. Therefore, those legislators must follow the provisions of 26 USC 274(d), must specifically substantiate all lodging and meal expenses, and cannot take advantage of unreimbursed expenses set forth below. Because 26 USC 274(d) requires out-of-town travel before a person can claim lodging and meal expenses, a legislator who lives in Helena cannot claim any meal or travel expenses for session activities occurring within Helena.

Unreimbursed Expenses

All legislators who live more than 50 miles from the Capitol building are considered to have substantiated expenses equal to $80 a day, but they receive only $70 in per diem payments. Under 26 CFR 1.62-1T(e)(4), the legislator is allowed as a deduction a portion of this unreimbursed expense. The amount of the deduction is determined as follows:

(1) The $10 difference must be allocated between lodging and meals in the same ratio as is set forth in the schedule in 41 CFR Ch. 301 App. A, after subtracting $6 (the amount allocated to incidental expenses) from the meals and

incidental expenses amount. The ratio of $50/$24 is 68%/32%. Thus, of the $10, $6.80 is allocated to unreimbursed lodging expenses and $3.20 to unreimbursed meal expenses.

(2) All of the $6.80 lodging expense and 50% of the $3.20 meal expense (see 26 USC 274(n)) are deductible, subject to the 2% floor on miscellaneous itemized deductions of 26 USC 67.

A qualifying legislator may receive per diem allowable travel reimbursement for each legislative day, as defined in 26 USC 167(h)(2). A legislative day is each day that the Legislature was in session, including days during breaks if Legislature was not in session for a period of 4 consecutive days or less. A legislator can claim any day as a legislative day even if the Legislature was not in session but the physical presence of the legislator was formally recorded at a meeting of a committee of the Legislature. During 1997, the Legislature was in session for 108 days that met the federal definition of a "legislative day" and per diem was paid for 106 of those days. The 2 days for which per diem was not paid may be claimed for $80 per day unreimbursed business expenses and may be deducted as provided above, except that the base amounts are the daily allowable total of $50 for lodging, $24 for meals, and $6 for incidental expenses.

Per diem is paid for committee members' attendance at committee meetings held during the interim. Days in Helena on legislative business for which no per diem was paid are unreimbursed business travel expense days and may be deducted as described above.

SUBCOMMITTEE ON WELFARE AND CHILD SUPPORT ENFORCEMENT PROGRAMS

Subcommittee Holds First Meeting...The Subcommittee on Welfare and Child Support Enforcement Programs held its first meeting on Tuesday, December 9 in Room 437 of the Capitol Building. Senator Chuck Swysgood was elected Chair and Representative Beverly Barnhart was elected Vice-Chair.

Members Hear Report from Child Support Enforcement Division...Mary Ann Wellbank, Administrator of the Child Support Enforcement Division (CSED) of the Department of Public Health and Human Services, provided the Subcommittee with an update on the implementation of Senate Bill No. 374. Ms. Wellbank reported that the new hire reporting provision of the bill has been implemented with great success. Within the first three weeks of implementation, 110 parents who owe child support were found. There have been some complaints from employers, but it has not been overwhelming. The Division is working to make the new hire reporting as easy as

possible for employers. Senator Mignon Waterman stated that the Montana Chamber of Commerce has not had many complaints from employers either.

Exemptions Being Sought While New Requirements Being Imposed...Ms. Wellbank briefly reviewed the key provisions of the bill that caused the most debate during the legislative session. The Division has been in contact with both Senator Burns and Senator Baucus to ask their assistance in seeking federal exemptions from some of the provisions. The exemption from the exclusion of the right to a jury trial in paternity cases has been unofficially granted. The exemption from the Social Security number requirements will be submitted in February.

This past summer, Congress passed the Balanced Budget Act of 1997 that included some technical amendments to the Personal Responsibility and Work Opportunities Reconciliation Act (PRWORA). These amendments are retroactive to August 22, 1996, the date PRWORA went into effect. The technical amendments require:

- the use of Social Security numbers on applications for regular drivers' licenses;
- the use of Social Security numbers on applications for recreational (hunting, fishing, etc.) licenses; and
- that new hire information be shared with the Social Security Administration and the Internal Revenue Service.

Response by Other States...Ms. Wellbank reported on the response of two other states to the child support enforcement requirements of PRWORA. The Idaho Legislature has declined to implement the provisions, and the federal Office of Child Support Enforcement (OCSE) will soon file a "Notice of Intent to Disapprove State Plan". The state then has the option to appeal the disapproval. How long before a final determination of the issue is made is unknown at this time. Both the Subcommittee and the CSED will follow the progress of the Idaho situation very closely.

The Kansas Legislature passed the required legislation but then directed the Kansas Department of Social and Rehabilitation Services to sue the federal government, charging that the child support enforcement requirements violate the Unfunded Mandate Relief Act. Staff attorneys for the CSED question the efficacy of the Kansas suit.

The OCSE has contracted with the National Conference of State Legislatures (NCSL) to conduct a survey of state compliance with the child support enforcement requirements. In addition, NCSL has established a task force to look at the issues of contention between legislators and Congress and try to come to some compromise on the issues. The Subcommittee will follow the work of this task force very closely.

CSED to Propose Legislation in 1999...Ms. Wellbank stated that the CSED will propose legislation in 1999 to:

- implement the new federal requirements;
- renew the provisions that were sunsetted in SB 374; and
- do some other "clean-up" of the child support enforcement laws.

Ms. Wellbank requested the Subcommittee to consider endorsing the legislation if the Subcommittee determines that compliance with the federal requirements is necessary and desirable for Montana.

Subcommittee Adopts Study Plan...Connie Erickson, Subcommittee research analyst, presented a proposed study plan for the Subcommittee. Representative Grimes also presented a proposal to the Subcommittee that involved a scientific research study to be conducted by DPHHS with assistance from the University of Montana and Montana State University-Bozeman. The objective of the study would be to understand what works best to enable welfare recipients to become self-sufficient and then use those success indicators to design a program with state funding only. The study would involve an extensive data-gathering effort followed by the use of "focus groups" of welfare recipients around the state. After much discussion, the Subcommittee turned down Rep. Grimes' plan due to lack of funding to contract out the study and a lack of time. In addition, the Subcommittee felt that the DPHHS staff was burdened with enough other duties to preclude their conducting the proposed study. The Subcommittee then adopted the study plan proposed by staff.

Subcommittee Adopts Meeting Schedule...The Subcommittee adopted the following meeting schedule:

Tuesday, January 27, 1998
Wednesday, March 11, 1998
Wednesday & Thursday, April 22-23, 1998
Tuesday, June 16, 1998 (subject to possible change)
Tuesday, August 25, 1998 (subject to possible change)

If you wish a copy of the study plan or wish to be placed on the interested persons' mailing list, please contact Connie Erickson, Legislative Services Division, at 444-3064 or by e-mail at <cerickson@mt.gov>.

CAPITOL RESTORATION

To Publish Restoration Newsletter...The design work for the Capitol restoration project is moving forward. The Design Team met in December with numerous building representatives, legislative representatives, and interested individuals to review and establish design parameters. The Team will be issuing periodic newsletters to keep all who are interested up-to-date on the status of the project. The newsletters will be available in written form and on the State Bulletin Board System (BBS). The BBS can be accessed through the Internet at www.METNET.mt.gov. From the METNET home page, click on "Montana State Government", then "Administration", then "General Services Division", and finally "Capitol Restoration". At "Capitol Restoration" you will find the most current newsletter.

If you would like to receive a written copy of the newsletter, please contact the General Services Division at 444-3060 and your name will be placed on the mailing list.

LEGISLATIVE FINANCE COMMITTEE

LFC Meets in December...The Legislative Finance Committee (LFC) met on December 4 and 5. Highlights of selected reports heard are presented below.

Committee Discusses MTPRRIME vs University System Alternative Systems...The LFC heard a report on the Montana University System (MUS) cost/benefit analysis of implementing the SCT/Banner management information system chosen by the MUS compared to the PeopleSoft system chosen by the state. University testimony indicated that it could cost $12 million to $14 million more for the MUS to implement PeopleSoft than Banner. A Legislative Fiscal Division (LFD) report posed a number of questions that had not been answered, including the costs of establishing interfaces and transferring data between the MUS and state systems. The LFC requested that the MUS estimate how much it will cost to create interfaces between the Banner system and the state and report to the LFD by the end of December, 1997. The LFC will hold a meeting in January, 1998 to discuss the report if necessary.

Federal Tax Reform: Impact on State General Fund...The Committee heard a report on the effects of federal tax reform (Taxpayer Relief Act of 1997) on Montana state income tax revenues. The majority of the federal income tax relief is attributable to a child tax credit, expanded individual retirement accounts, education tax incentives, health insurance deductions, and capital gains rate reductions. These federal reforms affect Montana taxes directly where they impact federal adjusted gross income, which is used by Montana as a basis for the state tax. They have indirect impact where they reduce federal tax liability, thereby increasing Montana income tax revenue due to a lower federal tax deduction. The new provisions may also impact state tax revenues due to a change in taxpayer behavior. The most likely impact on Montana income tax revenue is projected to range from $20 to $29 million during the 1999 and 2001 bienniums. The 1999 biennium impact alone is expected to range from $9 to $12 million.

Joint Budget Book...The Committee heard a report on the advantages and disadvantages of a joint executive budget/legislative budget analysis report. The 1995 Legislature statutorily required a joint budget presentation in the 1997 session as a pilot project. The requirement sunsetted after the 1997 session. The Committee voted to direct staff to do a separate budget analysis presentation for the 1999 session, and forego the joint book, citing issues of independence and of delays in getting the executive budget in November if a joint book is used.

Budget Analysis Book Format...The Committee discussed possible changes to the format of the budget analysis document presented to the Legislature each session. Among the suggestions made by staff are:

1) provision of subprogram tables for complex programs (which will be a part of the new budget system being developed as part of the MTPRRIME project);
2) listing of funding for certain present law adjustments;
3) better categorization of present law adjustments into policy decision points; and
4) elimination of the "other base adjustments" present law expenditure category.

Among the possible changes suggested by the Committee are:

1) a table for each agency listing who the agency serves and in what number;
2) a table listing all new proposals for an agency;
3) provision of a way of dealing more efficiently with multi-program or multi-agency issues; and
4) inclusion of a glossary.

The Committee also discussed expenditures in the context of legislative intent, including the provision of line-item appropriations, and the tracking of expenditures for capital projects.

Dept. of Corrections Medical Staff Hiring...The Committee also heard a presentation from Sally Johnson, Administrator of the Professional Services Division of the Department of Corrections, and Dr. Robert Jones, the newly hired Medical Director for the Department of Corrections. Ms. Johnson outlined the justification for the new position within the Department and why Dr. Jones was selected, emphasizing the following:

1) that a staff medical director was required in order for the Department to achieve compliance with corrections medical standards;
2) funding was provided for this position in a new budget proposal approved by the 1997 Legislature;
3) Dr. Jones was available and came highly recommended; and
4) it was not feasible to contract with private physicians because either they would not be able to contribute the time required and or did not have the experience necessary for this position.

Dr. Jones gave a brief presentation outlining his experience and qualifications. The Committee expressed concern about the lack of a competitive solicitation of candidates for the position.

Mental Health Managed Care...The LFC heard a report from the Department of Public Health and Human Services (DPHHS) on the status of the Mental Health Managed Care contract. Since the time the LFC met in October, the Department presented Montana Community Partners (MCP) and Merit Behavioral Care (the company that acquired CMG) with a list of twenty-five required program improvements and specific actions to be accomplished by definite dates. MCP responded with a "Program Improvement Plan" that details actions to be taken by MCP/Merit on issues that have been of interest to the LFC, including claims payment, provider network completion, and contract amendments. Other problem areas addressed in the plan are data reporting, eligibility determination, service authorization, and quality improvement. The plan calls for all tasks to be completed by February 15, 1998.

The LFC expressed great concern over the inability of the contractor to overcome administrative issues, such as claims payment. In addition, the LFC is very concerned about the impact of the problems with program implementation on mental health service consumers.

The status of this program will be on the agenda for the LFC's March 12-13, 1998, meeting.

Children's Health Insurance Program...The Committee heard a staff report on the Children's Health Insurance Program, a new program included in the Balanced Budget Act of 1997 enacted by Congress last summer. The purpose of the program is to provide funds to states to enable them to initiate and expand the provision of child health assistance to uninsured, low-income children in an effective and efficient manner that is coordinated with other sources of health benefits coverage for children. State participation in the program is voluntary. Program options include creation or expansion of a separate Children's Health Insurance Program, expansion of the Medicaid program, or a combination of both. Montana stands to receive up to $9.8 million in the first year of the program; the state match required is approximately 21 percent, or $2.6 million if the first year's allocation is fully accessed.

The Committee discussed the DPHHS' planning process for this program, the legislative role in deciding whether or not the state should participate in this program, and, if so, how the program should be designed. The Department reported that recent findings by the Legislative Auditor requiring a reversal of a fiscal year 1997 accrual may have eliminated the possibility of implementing a pilot project before the next regular legislative session. The Legislative Finance Committee did not take an official position on the program; however, it requested the Department to keep it apprised of the development of this program.

1999 Biennium General Fund Fiscal Developments...Terry Johnson of the LFD staff presented a report on recent general fund fiscal developments that impact the projected ending fund balance for the 1999 biennium. Five fiscal issues were identified with the estimated fiscal impact. The report did not address other year-to-date revenue trends and disbursement patterns. Institutional reimbursements are expected to be $6.7 million ($6.0 million in Medicaid reimbursements below the House Joint Resolution 2 revenue estimate). This is due to the reimbursements now being used to pay a portion of the mental health managed care contract and an

oversight in not adjusting the revenue estimate during session to reflect this change. In addition, federal tax reform will increase state income tax revenues by $9 to $12 million as discussed above. Reimbursements to local government for personal property taxes (HB 20, June 1989 special session and SB 417, 1997 session) are expected to decline $0.9 million. In addition, the fund balance is expected to be adjusted primarily due to a reduction of an accrual in DPHHS of over $8 million. The net impact is that the general fund should increase from $10.8 to $12.5 million above the previously projected $18.9 million.

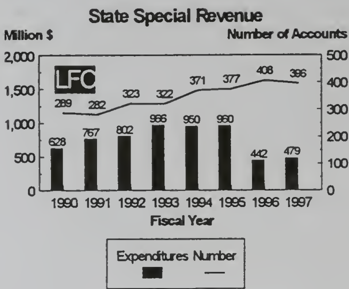
Budget Amendments...Since the last LFC meeting, LFD staff reviewed 15 certified budget amendments that added 0.65 FTE and $2.7 million to the biennium budget. Although staff brought an issue to the attention of the Committee with five of the amendments with the potential to save $610,000 general fund, the Committee took no action.

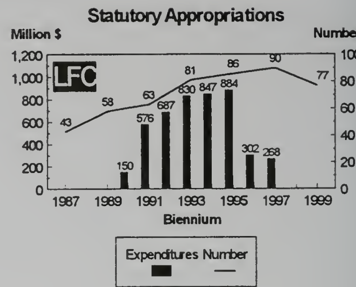
Fiscal Issues and Status of Other Interim Studies...The Committee received reports on fiscal issues related to several other interim studies that are being supported by LFD staff. These include the Correctional Standards and Oversight Committee, Interim Property Tax Committee, Postsecondary Education Policy and Budget, Revenue Oversight Committee, Revenue Estimation Procedures Task Force, Transportation Funding Study, and Committee on State Management Systems.

SUBCOMMITTEE ON DEDICATED REVENUES AND STATUTORY APPROPRIATIONS

Subcommittee Meets...The Legislative Fiscal Division (LFD) is responsible for reviewing dedicated revenue and statutory appropriation for the purpose of determining if the Legislature can gain more control over prioritization of the expenditures. The Subcommittee on Dedicated Revenues and Statutory Appropriations met on December 4 and reviewed historical data of state special revenue and statutory appropriations (see the graphs on page 10). Effects of prior LFD action on these items are evident from the reductions in state special revenue and statutory appropriation expenditures in fiscal 1996 and 1997.

The Subcommittee will meet again prior to the Legislative Finance Committee meeting in March. For the next meeting, staff will provide an analysis of the statutory appropriations to assist the Subcommittee in its determinations. Staff will also be analyzing survey information of each state special revenue account for presentation at future Subcommittee meetings.





SUBCOMMITTEE ON INTERNAL SERVICES RATE-SETTING METHODOLOGY

Subcommittee Meets...The Internal Service Fund Rate-Setting Methodology Subcommittee of the Legislative Finance Committee met December 4. The Subcommittee approved the agreements made between the Legislative Fiscal Division (LFD), the Office of Budget and Program Planning (OBPP), and agencies regarding rate-setting methodology, including agreements that agencies would provide historical and projected fund balance and working capital information and would specifically define and justify the type of rate requested for each internal service fund. The Subcommittee also agreed that agencies, on an individual basis and only with special justification, could define some internal service fund rates as a specific amount of working capital. The Subcommittee directed LFD staff to meet with OBPP staff and agency representatives to develop a form for agency use in setting rates.

POSTSECONDARY EDUCATION POLICY AND BUDGET COMMITTEE

PEPB Committee Meets...At its December 12 meeting the Postsecondary Education Policy and Budget Committee (PEPB) received information regarding student financial aid, heard a Montana University System update on faculty productivity and performance accountability measures, a Legislative Fiscal Division (LFD) report on South Carolina performance-based budgeting, and a report on non-beneficiary enrollment and tuition charged students in tribal colleges.

Student Financial Aid...Mick Hanson, Financial Aid Director at the University of Montana, presented a report entitled, "Meeting the Challenge", authored by the Task Force on Financial Aid Reform. The report shows that approximately 50 percent

of resident students can expect a family contribution of less than $2,500 per year and details estimates of the student unmet financial need according to federal government standards. The LFD presented reports detailing:

1) the total student cost of an education;
2) the amount of financial aid available to students in fiscal 1997; and
3) the trends in fee waivers, grants, loans, and work study programs from fiscal 1994 through fiscal 1997.

Discussion and action on the nine financial aid issues raised in the LFD report were postponed until the March meeting.

Non-beneficiary Enrollment and Tuition in Tribal Colleges...The Montana University System report contained preliminary data indicating that non-beneficiary student enrollment was relatively unchanged during the 1997 biennium when the state provided funding to the tribal colleges for those students. Tuition increases of approximately $150 per semester for Indian students and $350 for non-beneficiary students at Salish Kootenai College were implemented in fiscal 1998. The increase for non-tribal members resulted in a $1,054 tuition charge per semester, an amount approximately equal to that charged in some units of the Montana University system.

PEPB to Meet in March...The PEPB decided the next meeting will be March 2 at 9 a.m. The agenda will include:

1) presentations by the Extension Service and the Agricultural Research Center;
2) continuing review and possibly action on two-year education issues; and
3) action on financial aid issues.

LEGISLATIVE AUDIT COMMITTEE

Committee to Meet in January...The Legislative Audit Committee is scheduled to meet January 16, 1998, in Room 437 in the Capitol. The following reports are scheduled to be presented.

FINANCIAL -COMPLIANCE AUDITS:

Montana Arts Council (97-23)
Department of Justice (97-17)
Department of Agriculture (97-19)
Board of Regents and Commissioner of Higher Education (97-18)
Department of Livestock (97-20)
Teachers Retirement (97-09)

CONTRACT AUDITS:

State of Montana - Legislative Branch Excluding the Consumer Counsel (97C-04)
State of Montana - Office of The Consumer Counsel (97C-04)

ELECTRONIC DATA PROCESSING AUDITS:

Information Processing Facility and Central Applications (97DP-02)

CORRECTIONAL STANDARDS AND OVERSIGHT COMMITTEE

Committee to Tour Juvenile Girls' Facility...The next meeting of the Correctional Standards and Oversight Committee will begin the afternoon of January 22 in Boulder with a tour of the new juvenile girls' facility and an update on juvenile issues. The meeting will continue January 23 in Helena, concentrating on the long-range building and 5-year plan for the entire correctional system. The Subcommittees are actively pursuing many areas in corrections:

Jail Standards...The next meeting of the Jail Standards Subcommittee will be January 7, 8, and 9 in Missoula.

Juvenile Issues...The Juvenile Issues Subcommittee met December 15 on the topic of juvenile detention centers. The Subcommittee learned the history of the current licensing standards and received a draft of proposed administrative rules for detention center licensing. The January 22 meeting of the full Committee will be concentrating on juvenile issues.

Planning and Projections...The Planning and Projections Subcommittee met December 2 and will be presenting information on a recommended format for population projections, per diem costs, trend data, and correctional terms to the full Committee on January 23.

Private Prisons and Programs...The Private Prisons and Programs Subcommittee and the Ad Hoc Committee on Sentencing met December 12 in Helena. The Subcommittee heard information on how new correctional chemical dependency programs are raising licensing, certification, and standards issues and is pursuing information on how to compare private prison costs to state prison costs.

The Ad Hoc Committee is exploring sentencing alternatives such as the Intensive Supervision and 4th DUI treatment programs, the existing sentencing structure, and avenues to improve the sentencing statutes.

If you need additional details on Subcommittee meetings or are interested in being placed on the interested persons list for the Correctional Standards and Oversight Committee or any of its Subcommittees, please contact Susan Fox at 444-3064 or by

e-mail at <sfox@mt.gov>.

COMMITTEE ON INDIAN AFFAIRS

Committee Changes Meeting Date...The Committee on Indian Affairs has changed its next meeting date from Friday, January 9 to Thursday, January 15. The meeting will begin at 9 a.m. in Room 108 of the Capitol building.

At the January meeting, the Committee will hear from Toni Plummer of Cherish Our Indian Children and from Andrea Main and Leonard Smith of the Montana Indian Manufacturing Network. Economic development planners from Montana's Indian tribes have also been invited to participate in a discussion of economic development on Montana's Indian reservations.

INTERIM PROPERTY TAX COMMITTEE

Interim Property Tax Committee Meets in Hamilton and Missoula...The Interim Property Tax Committee created by Senate Bill 195 continued its efforts to develop alternatives to Montana's property tax system by meeting in Hamilton and Missoula on December 11 and 12, respectively.

Committee Discusses Centrally Assessed Property...The focus of an afternoon work session for the Committee in Hamilton was a seminar on the appraisal of "centrally assessed" property, including telephone company and electric utility property. The seminar was followed by briefings from Barbara Ranf, US West Communications, and Mike Strand, MT Independent Telephone Systems, on the effects of deregulation in the telecommunications and issues of state taxation. Committee discussion following the seminar and briefings focused on electric utility property, especially hydropower generation facilities (dams) and other electric generation plants, probably due to the proximate timing of the Montana Power Company's announcement of its intention to sell its dams in Montana. The issues are of growing concern to tax policy makers, if for no other reason than the fiscal impacts to the state (especially K-12 funding) and, moreover, to local governments specifically affected by any private transactions affecting statewide or local taxable valuation. Because the Revenue Oversight Committee (ROC) is specifically assigned to investigate the tax policy and revenue implications of energy restructuring, the Property Tax Committee has deferred to ROC on this aspect of property taxation and eagerly and anxiously awaits further developments and reports, most likely beginning in March.

Committee Holds Two Public Hearings...Following the Thursday work session, the Committee convened a public hearing in Hamilton on Thursday evening and a second hearing in Missoula on Friday morning. Comments received in both Hamilton and Missoula paralleled comments received previously at the public hearings conducted in Miles City, Forsyth, Dillon and Butte, and include: property taxes are too high; taxes

(generally) are too high; schools spend too much money; property taxes are unpredictable (for both taxpayers and local governments, including schools); Montana needs a sales tax; Montana shouldn't have a sales tax; a sales tax to fund schools would be acceptable; Montanans won't accept any kind of a (general) sales tax; home values (for taxation purposes) should be the price paid for the home; value for taxation should be based on square footage, period; the only fair way (to tax homes) is based on market value; local governments can't be trusted to lower mills if the value goes up; property tax decisions should be left to local governments; the Legislature can't be trusted; the Department of Revenue's estimates of value are way too high; the Department of Revenue's estimates of value are very close to what the market is; and so on.

Comments like these, and others, evidence the difficulty that confronts the Committee and, eventually, the 56th Legislature: Pass a sales tax and anger those who are against it? Fail to pass a sales tax and anger those who are for it? Put a sales tax on the ballot and anger both those for it and those against it? Recognize that communities would prefer for the Legislature to enhance "local control" and provide greater autonomy and authority to local government, including schools? Recognize that local governments cannot be trusted with the property tax purse strings, thereby requiring the Legislature to minimize local control through statutory prohibitions?

From the testimony compiled at six public hearings thus far, it appears that homeowners are the most vocal group and the group most concerned with recent trends in property taxation. Those attitudes can be understood simply by recognizing that homeowners, as a property tax class, are bearing an increasingly larger slice of the property tax pie and the rate at which the size of the slice is growing is more rapid for homeowners than for any other property tax class.

Future Committee Work...What lies ahead for the Committee includes additional study of property tax and public finance issues, including the concept of acquisition value; "Proposition 13" type restrictions and requirements; the effects of nonlevy revenue on local government budgets and revenues; and the potential impacts of "restructuring" and deregulation on the electric utility, telecommunications, natural gas and other regulated industries. By early Spring, the Committee members will have begun the discussion of "alternatives" to be included in the menu to be forwarded to the 56th Legislature. Consequently, now is the time to contact a Committee member with your ideas for "revising, reforming, or replacing Montana's property tax system".

Committee Revises Meeting Schedule...Finally, the Committee agreed to revise its meeting schedule in three instances. First, the Committee's next meeting will be in Lewistown in late January as originally planned. However, to allow sufficient time for both public comment and Committee work sessions, the public hearing will be moved up to Wednesday evening, January 28. The Committee's work session will remain as planned on Thursday, January 29. Both the public hearing on Wednesday, 1/28/98 and the Committee's work session on Thursday, 1/29/98 will be at the Yogo Inn. Additionally, the Committee has been invited to provide a forum for, potentially, all 168 of Montana's county commissioners at the winter meeting of the Montana

Association of Counties in Billings on February 9. Details of the Billings' MACO meeting will be provided in ***THE INTERIM*** next month. For additional information, contact Committee Chairman Senator Barry "Spook" Stang (649-2414) or Dave Bohyer (444-3064) or by e-mail at <dbohyer@mt.gov.>.

COMMITTEE ON PUBLIC EMPLOYEE RETIREMENT SYSTEMS

Committee To Gather Information Through Focus Groups...Each legislative session legislators are confronted with numerous bills that affect the funding and design of the public employee retirement plans. The Public Employee Retirement System (PERS) is the largest of the public employee plans and consists of more than 28,000 active members statewide and more than 500 different employers, including state agencies and participating counties, cities, school districts, other public agencies, and the universities. Employers and employees each must contribute to PERS 6.8% of salary, increasing to 6.9% of salary in 1999. Thus, covered employees and employers are each now spending about $41.4 million annually to pay for benefits under PERS.

The guidelines under which the Committee on Public Employee Retirement Systems (CPERS) must operate are outlined in House Bill No. 90, passed by the 1997 Legislature. The bill requires CPERS to consider various plan design options that will change PERS to more of a defined contribution plan. Potential changes will involve increasing benefit portability and providing members with choices about contribution levels, investment options, and benefit payment options. A component of the plan must still provide for some type of defined benefit for members in retirement.

The current effort to gather basic information on policy goals related to PERS involves 12 employee and 5 employer focus groups, which will be conducted during the week of January 12, 1998. CPERS sent out more than 880 invitations for PERS members and participating employers throughout the state to attend focus groups on the retirement plan. Outside consultants specializing in retirement plan design and finance will facilitate each group. Each group meeting will last 90 minutes. Meeting sites include Billings Glendive, Glasgow, Havre, Great Falls, Kalispell, Missoula, Butte, Bozeman, and Helena.

The employee group meetings are designed so that PERS members will discuss what members expect their income needs will be in retirement and what savings outside of PERS members have to provide for that level of income in retirement. The discussions will also help the consultants assess member priorities so that the consulting team can develop appropriate options for changing PERS. Employee participants were selected based on a random sample of active PERS members to provide a good cross section of participants by age, years of service, salary, gender, geographic location, and type of employer.

The employer group meetings will give employers an opportunity to discuss their goals, from an employer's perspective, related to PERS funding and plan design. Discussions will encompass recruitment and retention needs, funding issues, and other

personnel policy goals.

Responding to a request by CPERS Chairwoman Sen. Sue Bartlett and Vice-chairman Rep. Matt Brainard, Governor Racicot instructed his agency directors to allow state employees time to participate in the focus groups during regular work hours. Governor Racicot also encouraged local government employers to do the same for their employees.

Telephone or Written Survey To Be Conducted...In addition to the information-gathering effort through the focus groups, the Public Employees' Retirement Board has approved funds for a telephone or written survey of PERS members. The Board expects to conduct the survey concurrently with the focus groups so that the consultants can use the information when formulating options and recommendations for CPERS to consider. This survey will be in addition to a smaller written survey that will be part of each focus group meeting.

Internet Site for CPERS...To provide updated information on an on-going basis, CPERS has established an Internet site. The site provides access to information about CPERS, committee minutes, the text of HB 90, news updates, and other related materials. Interested people can get to the site by typing in the following Internet address, <http://www.mt.gov/leg/branch/int_comm.htm>.

To Meet in January...The next meeting of CPERS will be held on Thursday, January 15, 1998, from 1:30 p.m. to 4:30 p.m. in Room 104 of the State Capitol. This meeting will be a follow-up to the last CPERS meeting, which involved a discussion of the goals and expectations of each committee member and which was facilitated by the consulting team.

Legislators who do not currently serve on CPERS, but who would like to provide input to the consulting team regarding their policy interests and concerns about PERS are encouraged to contact Sheri Heffelfinger at (406) 444-3064 or by e-mail at <sheffelfinger@mt.gov>.

GAMBLING STUDY COMMISSION

Commission Issues RFPs...House Bill 615 (Chapter 494, Laws of 1997) mandated a comprehensive study of the social and economic impacts of gambling in Montana and established a 5-member appointed Gambling Study Commission to obtain such a study and examine its results. The Commission issued a request for proposals (RFP) on October 14 and received formal responses before the December 8 deadline. On December 11, the Commission met at the State Capitol in Helena to evaluate the proposals and score them in accordance with the criteria set forth in the RFP. Points were awarded in the following scoring categories: methodology; organizational make-up and access to resources; experience (including work with/for legislative bodies); staff qualifications; the relevant characteristics of former clients and the quality of work samples; and the fee proposal.

Four of the proposals (one each from research teams at the University of Idaho, the University of South Dakota, the University of Illinois, and the Economics Resource Group in Cambridge, Massachusetts) were judged to be incomplete in one or several of these categories. The remaining two proposals, from Hunter Interests, Inc. in Annapolis, Maryland and a joint venture including the Bureau of Business and Economic Research at the University of Montana and Gemini Research in Northampton, Massachusetts, achieved equal total scores.

Commission to Select Contractor...These two finalists will have made, by the time this issue of ***THE INTERIM*** is published, oral presentations to the Commission (on December 18), and the Commission will have selected a "winner" for the $90,000 contract based on a composite score of the written proposal and the oral presentation. The scoring criteria for the oral segment include: presentation style and content; the ability to convey complex information simply and clearly; the effective use of visual aids; clear responses to questions; and the degree of understanding of what services the Commission requires.

While conflict of interest considerations were not part of the scoring criteria, they were an important part of the RFP and will remain significant for the duration of the study contract. The Commission required all the proposals to contain signed statements verifying that the persons directly involved in the study were not already engaged in work for or against gambling industry interests and would not become so during the contract period, which will last from January 1 to October 2, 1998. (HB 615 requires the study to have been concluded and presented to the public on or before October 1, 1998, and the Commission plans to hold 2 public hearings on the study results in late September.)

Study to begin January 1...As of January 1, the gambling study will be underway. The contractor will be required to provide several progress reports to the Commission prior to issuing a final report (before September 1) and the subsequent hearings. The Commission will provide timely notice to interested persons and the public at large regarding the date, time, and place of these presentations, and time will be allotted in each case to public comment.

For further information, please contact Stephen Maly in the Research Office of the Legislative Services Division at (406) 444-3064 or by e-mail at <smaly@mt.gov>.

TRANSITION ADVISORY COMMITTEE

TAC to Meet in Missoula...The Electric Utility Industry Restructuring Transition Advisory Committee (TAC) will meet on Friday, February 6, 1998, at the Holiday Inn in Missoula. The main items on the agenda are customer aggregation (strategies and opportunities to create purchasing pools); reciprocity (with neighboring states), and market power issues (e.g., impediments to new entrants in the supply segment of the electricity market). Between now and then, several TAC

subcommittees will be actively preparing to make reports to the full committee in February.

TAC Education Subcommittee...The Education Subcommittee plans to meet for 2-3 hours in the State Capitol building in Helena the week of January 19. The exact date, time, and location of the meeting have not been determined. (See staff contact person below). Members of this subcommittee are Dave Wheelihan, chair (Montana Electrical Cooperatives Association), Senator Fred Thomas, Bob Nelson (Consumer Council), Stephen Bradley (Crow Tribe), and Roma Taylor (citizens' advocate) The primary focus of the meeting will be what's been called "The Collaborative", an ongoing process initiated by Montana Power Company (MPC), facilitated by Gerald Mueller of Consensus Associates, and involving voluntary participation by representatives of the Public Service Commission, the Bonneville Power Administration, the Department of Environmental Quality, the Department of Public Health and Human Services, PacifiCorp, Energy Share, the TAC, and a variety of citizens' organizations. Representatives from the Montana Electrical Cooperatives Association (MECA) as well as TAC staff members have participated in several of the Collaborative's meetings to date. The Subcommittee meeting will provide an additional opportunity for TAC members to gain insights into how investor-owned utilities plan to meet their obligations under Senate Bill 390 to inform customers about the transition to competition and to set-up and carry-through pilot programs prior to the advent of choice for residential and small commercial consumers in 2002.

TAC Universal System Benefits Programs (USBP) Subcommittee...The 1997 Legislature, in enacting Senate Bill No. 390, created a Universal System Benefits Program (USBP) fund. Annually, starting January 1, 1999, each utility/cooperative must contribute 2.4% of its 1995 retail sales revenue which is established for each utility and cooperative as its annual USBP fund level. A utility's or cooperative's minimum annual funding requirement for low-income energy and weatherization assistance is established at 17% of the utility's or cooperative's annual USBP funding level. SB390 provides for utility, cooperative, and large customer credits against their contributions to the USBP fund, and cooperatives may collectively pool their statewide credits.

The purpose of the USBP fund, according to SB390, is "to ensure continued funding of and new expenditures for energy conservation, renewable resource projects and applications, and low-income energy assistance during the transition period and into the future." In addition to cost-effective energy conservation, renewable resource projects and applications, and low-income energy assistance, SB 390 defines USBP to also include "research and development programs related to energy conservation and renewables." Under SB 390, the TAC is required to make recommendations before January 1, 1999, to the Governor, regarding the implementation of the USBP fund.

At its October 6 and 7, 1997, meeting, the TAC established the USBP Fund Subcommittee. The charge of the Subcommittee is to analyze the issues associated with the USBP fund and make recommendations to the full TAC regarding fund implementation in order to fulfill the TAC's statutory requirements.

The USBP Subcommittee met on December 5th to begin the process of formulating recommendations. The subcommittee conducted the following activities:

1. Reviewed the USBP categories (69-8-402, MCA) -- including a discussion on how these categories should be defined.
2. Received a report on existing Montana USBPs including program purpose and function; program present and future funding requirements; and how, or whether, current programs qualify for USBP treatment under SB390.
3. Reviewed Montana Power Company and PacificCorp restructuring plans as they relate to USBP.
4. Heard a report on how other states are structuring USBP funds.
5. Reviewed proposed federal legislation as it relates to USBP funds.
6. Received an estimate from the utilities, cooperatives, and large customers on their respective percentage contributions in dollars to USBPs.
7. Heard an explanation of how the utilities, cooperatives, and large customers are defining what constitutes a "credit" under 69-8-402, MCA.
8. Had a preliminary discussion from the existing USBPs, utilities, cooperatives, and large customers as to whether there will be any money allocated to the fund after credits are applied.

The USBP Subcommittee recommended that staff send out a survey to the meeting participants to clarify some specific USBP issues.

The next TAC USBP Subcommittee meeting is scheduled for February 5 in Missoula. For more information, contract Todd Everts at 444-3747 or by e-mail at <teverts@mt.gov>..

<u>TAC Public Service Commission (PSC) Liaison Subcommittee</u>...At its October 6 and 7, 1997 meeting, the TAC established the PSC Liaison Subcommittee. The charge of the Subcommittee is to keep track of restructuring activities as they relate to PSC actions. TAC directives to the PSC Liaison Subcommittee include:

1. monitoring PSC activities on electric industry restructuring and report back to TAC;
2. analyzing the issues of aggregation, licensing of electricity suppliers, and state reciprocity and helping set TAC's agenda regarding these issues; and
3. other directives as may be assigned by TAC.

The PSC Liaison Subcommittee met on November 21. The Committee heard from a panel of potential marketers and aggregators on the barriers to doing business in Montana. The Committee also heard a report on problems associated with reciprocity provision in Senate Bill 390. Subcommittee Chairman Senator Lynch

scheduled another Subcommittee meeting for January 16 to set the full TAC agenda meeting scheduled for February 6. For more information contact Todd Everts at 444-3747.

TAC Revenue Oversight Liaison Subcommittee...There is one other subgroup within the 18-member TAC: the Revenue Oversight Liaison Group (to maintain communication between TAC and ROC on relevant tax issues). The next meeting of the Revenue Oversight Committee is scheduled for January 30 in Helena, and the agenda for that day will likely include consideration of the tax implications of restructuring.

"TAC" Report Available...The first edition of the "TAC Report" (a quarterly newsletter) was issued in November. Copies are available free of charge from the Legislative Services Division. The next issue will be completed and available for distribution prior to the February 6 TAC meeting. For additional information on the TAC Report, contact Research Analyst Stephen Maly at (406) 444-3064.

ENVIRONMENTAL QUALITY COUNCIL

EQC to Meet in January...The Environmental Quality Council (EQC) will meet on January 9, 1998 in Helena in Room 104 of the State Capitol. The meeting agenda is jammed packed. The Council will hear from Director Mark Siminoch of the Department of Environmental Quality (DEQ) on a variety of issues including the reorganization of the Impact Assessment Bureau, DEQ's MEPA implementation policy, DEQ's response to the EPA regarding the Montana environmental self audit legislation and DEQ's enforcement and compliance reporting system.

The Council will receive an update on the state water planning process. The EQC will also sponsor a voluntary best management practices informational seminar scheduled for Friday afternoon on January 9. Set out below is a summary of EQC subcommittee and working group activities in January.

Montana Growth Issues...At its January 8, 1998, meeting, the Growth Subcommittee plans to develop its working plan for the interim. The Subcommittee will receive a report on the growth survey it sent to all Montana cities and counties. In addition, the Subcommittee will host a panel discussion on topical growth issues from representatives of the building, real estate, consultant, developer, and lending communities. The panel discussion is part of an ongoing effort to hear different perspectives from across the state. For more information, contact Martha Colhoun, EQC staff, at 444-3742.

Water Policy...The Council's Water Policy Subcommittee will meet on January 8, beginning at 3 p.m., in Room 104 of the Capitol in Helena. They will be finalizing their work plan, and pursuing the topics they have included in it. There will be an update from staff on recent events and issues related to water policy in Montana.

Staff will also provide a briefing on the State Water Plan, in advance of the full-Council presentation from DEQ the following day.

Additional issues tentatively to be discussed include TMDL implementation and specific issues associated with this DEQ-facilitated effort, selected fishery management policies of the Montana Department of Fish, Wildlife & Parks, septic system regulation in the state and its relative effectiveness, dam management and related issues, and other follow-up items from their last meeting. For more information, contact Kathleen Williams, EQC staff, at 444-3742.

Waste Tire Study...The working group formed to study alternatives for managing waste or scrap tires in Montana has met twice and concluded that it is ready to identify problems, potential solutions, and make its recommendations to the EQC. Staff will be assembling available information and preparing a report on alternatives reviewed by the working group and developing a draft list of optional problems, solutions, and recommendations for the group to review and discuss at the next and possibly final meeting of the group in May or June.

Interested persons with suggestions on what alternative solutions should be included or information regarding current problems resulting from waste tire management in Montana are encouraged to contact Larry Mitchell, EQC staff, at 444-1352 or e-mail to <lamitchell@mt.gov>.

EQC Voluntary Best Management Practices Seminar... The EQC will hold a seminar during their afternoon portion of their January 9 meeting, entitled "Voluntary Best Management Practices (BMPs) and Beyond". The seminar will be divided into three parts, all focusing on various tools to enhance the voluntary component of environmental protection and pollution control in Montana. The topics will be:

> "Best Development Practices" (approaches that developers and communities can use to create livable communities, lessen potential resource impacts, and create marketable products);
>
> "Enhancing the Voluntary Component of Pollution Prevention in Montana - A Critique of 3 Tools (ISO 14000, "green" certification, and emissions trading); and
>
> Enhancing the Application and Effectiveness of Best Management Practices (BMPs) Related to Nonpoint-Source Water Pollution Control in Montana.

Each element of the seminar will include a description of each tool or concept, an evaluation of their applicability in Montana, and an opportunity for a variety of interests to share their perspectives and suggestions for Council and/or Legislative follow-up on the topics discussed in the seminar. For more information, contact Kathleen Williams, EQC staff, at 444-3742.

Next EQC Meeting....Following the January 9 meeting, the next EQC meeting is tentatively scheduled for March 13, 1998.

For more information please contact the EQC staff at 444-3742 or via the Internet at <teverts@mt.gov>.

OVERSIGHT COMMITTEE ON CHILDREN AND FAMILIES

To Meet in January...The Joint Oversight Committee on Children and Families will meet at 9 a.m. in Room 437 of the State Capitol on Thursday, January 8. This meeting will mark the midpoint of the Committee's meeting schedule, and members will be asked for their thoughts, suggestions, and comments on how well they think the Committee is working to achieve the interim goals it established at its first meeting, last August. To gauge its progress and to comply with the self-evaluation requirements pursuant to Chapter 257, Laws of 1997, the Committee is using an evaluation chart.

Committee to Assess Progress...In September, Committee members agreed upon a number of concrete goals for the 1997-98 interim, which are listed in the chart. The goals were to be accomplished through presentations by the state agency programs or private organizations that have requested to be before the Committee, followed by a Committee vote on whether or not to lend its support to the various proposals. Some of these goals are as follows:

> Examine causes of and possible solutions for teen pregnancy and review federal grants available for abstinence-only education.

> Receive information on Healthy Mothers/Healthy Babies Kids Count Data Book, and HMHB Fatherhood program and decide whether to lend Committee support.

> Receive presentation from Montana Council for Families; decide on Committee support of proposals involving child abuse prevention needs.

> Decide on Committee support of needs of DPHHS' Developmental Disabilities Division.

> Discuss and determine degree of support for "I am Your Child" and other needs of children ages 0-3.

> Oversee DPHHS' child care regulations and quality assurance of child care centers; identify possible changes in statute.

> Examine liability statutes that may discourage volunteerism.

> Decide on support of group home provider reimbursement rate increases.

> Produce a "Legislator's Guide to Child and Family Issues" for the 1999 Legislature.

On the evaluation chart, each of these goals is listed, followed by the dates of every meeting held. As the interim progresses, the Committee can evaluate itself by filling in the activity (a presentation, a Committee vote, Committee discussion, letter, etc.) for a specific goal on a specific meeting date. The chart also includes a column prompting an assessment of whether or not the goal was met by the end of the interim.

In addition, the Committee has chosen several areas in which it will receive regular updates to provide oversight, stay abreast of related activities and, most importantly, avoid duplication of effort between the Committee and other groups concerned with the needs of children and families. The areas identified by the Committee in August include the Interagency Coordinating Council for State Prevention Programs, the Committee on Indian Affairs, the Children's Health Insurance Program, Mental Health Managed Care, Corrections, child custody and visitation grants, and the Subcommittee on Welfare and Child Support Enforcement Programs.

<u>Agenda Items for January</u>...Agenda items for the January 8 meeting include a discussion of the Uniform Child Custody Jurisdiction and Enforcement Act recently released by the National Conference on Uniform State Laws; further discussions on teen pregnancy prevention, particularly grant projects involving abstinence-only education and unintended teen pregnancy reduction; a presentation by DPHHS' Developmental Disabilities Division and review of any suggested legislation; a midpoint evaluation discussion; and the regular updates in the areas listed in the preceeding paragraph. The Committee will also be asked to decide whether or not it would like to support the proposals presented at its November meeting by the Montana Council for Families.

For more information about the January 8 meeting or the Committee on Children and Families in general, please contact Leanne Kurtz at 444-3593 or e-mail at <lekurtz@mt.gov>.

COMMITTEE ON STATE MANAGEMENT SYSTEMS

<u>Committee Meets in November</u>...At its November 18 meeting, the Oversight Committee on State Management Systems explored local government and state government information technology interfaces with the help of Peggy Beltrone,

Cascade County Commissioner, Eric Spangenberg, Cascade County GIS Coordinator, and other members of the MACO Technology Committee. The Committee on State Management Systems learned that in Cascade County, numerous county offices regularly interact with, and are impacted by, state information systems. These offices include, but are not limited to:

- Office of Aging Services;
- County Commissioners' Offices;
- Clerk and Recorder's Office;
- County Planning Board;
- District Courts;
- Disaster and Emergency Services;
- County Extension Services;
- County Risk Manager;
- Surveyor's Office/Road Department; and
- Weed and Mosquito Office.

Cascade County reported that decisions made by the state vis a vis information technology have a direct impact on these and other local offices and urged state officials to keep local governments in the loop when making major changes. The Committee asked Lois Menzies, Department of Administration Director, and Ms. Beltrone to each bring to the Committee ideas on how to improve communication between the state and counties, while ensuring that local governments are given the opportunity to participate in information technology decision-making processes.

Committee to Meet in January...At its next meeting, which is scheduled for January 20, the Committee will receive an analysis of House Bill No. 188, the information technology bonding bill that allowed for the funding of MT PRRIME and numerous other information technology projects statewide, including Department of Corrections data systems improvements. At this meeting, Department of Corrections information technology staff will be on hand to discuss the Department's specific plans for upgrading its data systems.

Also on the agenda for January 20 is an update on the Montana Project to Reengineer the Revenue and Information Management Environment (MT PRRIME), an update on the activities of the Information Technology Advisory Council (ITAC), an update on the Department of Administration's Year 2000 planning, a demonstration of ways in which the public can access state government via the Internet, and a presentation by KPMG Pete Marwick discussing the state's Electronic Document Management and Imaging Systems.

For more information on the January 20 meeting or on the Committee on State Management Systems, please contact Leanne Kurtz at 444-3593 or e-mail at <lekurtz@mt.gov>.

LEGISLATIVE SERVICES DIVISION

LEGAL DIVISION

Ballot measures received:

Sales tax to replace property taxes and income taxes.

Pursuant to 13-27-202(2), MCA, copies of correspondence relating to ballot measures are available through the Secretary of State.

THE BACK PAGE

A major challenge confronting the 105th Congress is the reauthorization of the 6-year Intermodal Surface Transportation and Efficiency Act (ISTEA, pronounced "ice tea"), the omnibus transportation legislation which provided federal funding to the states for highways, transit systems, and other transportation-related programs from fiscal years 1992-1997.

In this month's "**The Back Page**", Cynthia Weaver discusses this challenge and the numerous bills that have been introduced regarding reauthorization.

Federal Transportation Reauthorization: The Road to the Next ISTEA

by Cynthia M. Weaver, Associate Fiscal Analyst
Legislative Fiscal Division

INTRODUCTION

With ISTEA funding having expired as of September 30, 1997, the states have been anxiously awaiting congressional approval of a new federal transportation funding program for the 21st century. Several multi-year bills have been offered in both the House and the Senate including NEXTEA, BESTEA, STARS 2000, ISTEA Works, STEP 21, and last but not least, ISTEA II. Congress has yet to reach consensus regarding the passage of an act which will provide authorization for continued funding of our national highway system and other transportation infrastructure. The lack of broad support for any of the successor bills offered thus far may partly be a result of the distinct differences between U.S. regional perspectives and needs.

However, the good news is that a temporary extension of ISTEA was adopted by both the House and the Senate in mid-November, in the final hours before adjournment for the year, which is expected to be signed by President Clinton. The act, entitled "Surface Transportation Extension Act of 1997" (S. 1519), provides states with additional obligation authority through May 1, 1998, nine months into federal fiscal year 1998. The stop-gap measure will provide Montana with a total obligation limitation of $88 million with a hard deadline of May 1, 1998, in which to obligate funds. States will be allowed to transfer funds from one ISTEA program category to another in order to provide extra flexibility in financing the state's highest priority projects (during the interim period only). Further, states may only obligate federal funds after the May 1st deadline if Congress has passed a reauthorization bill. This provision was included as an incentive for Congress to complete reauthorization earlier in the 1998 legislative year. The Senate's first order of business in January, after the legislative recess, will be transportation reauthorization.

CONTENTIOUS ISSUES IN THE DEBATE

Slicing the Federal Pie - State Apportionments

A divisive issue in the debate on reauthorization has been the opposing perspectives of donor and donee (recipient) states. Donor states are those states which contribute more in federal gas tax revenues than they receive back. Conversely, donee states receive more federal transportation funds than they contribute to the federal Highway Trust Fund. Montana, a donee state, currently receives nearly $2 for every $1 contributed to the federal Highway Trust Fund. Under current ISTEA provisions, the federal funding formula takes into account historical appropriations, federal lands, certain equity adjustments, etc. Montana fared well under the formula, receiving an average annual apportionment of $168 million. However, donor states, such as those in the Sunbelt, are questioning the fairness of a formula which does not fully take into account population growth or actual transportation needs and are pressing for its revision. A more detailed discussion of the various bills proposed in Congress follows in a later section of this article.

Growth in the Highway Trust Fund - More Funds for State Transportation Programs?

Another unresolved issue is the total level of funding that Congress will ultimately appropriate for transportation programs. The budget pact provides for $125 billion in outlays for ISTEA programs over the next five years, reflecting a very modest increase to the program at a time when federal fuel tax receipts are expected to grow. With estimates projecting a 15 percent increase in annual fuel tax revenues over the next five years to the federal Highway Trust Fund, which maintains an unobligated fund balance of $20 billion, the Trust Fund is projected to grow to more than $50 billion by 2002. Furthermore, the 4.3 cent per gallon gasoline tax, which Congress enacted in 1993 to help reduce the size of the federal budget deficit, was recently reallocated to the Trust Fund as part of the balanced budget plan President Clinton signed into law. The total federal gas tax is 18.4 cents. This will add about $6 billion more per year in revenues to the Trust Fund. In view of the high investment required to sustain and enhance the nation's transportation infrastructure, and the projections of growth in the Trust Fund, a number of state leaders are arguing for a larger federal-aid program. If Congress wishes to increase the total appropriation for transportation programs, it can do so in the reauthorization act, which will supersede the previous appropriation made in the budget pact. However, increasing transportation funding could potentially impact the balanced budget plan.

Many also question the federal practice of appropriating transportation funds at one level and then allocating those funds at a reduced percentage of the appropriation. The practice of instituting obligation ceilings was started by Congress in an effort to "slow down" the 6-year program by limiting the total amount of federal funds that could be obligated or spent by states each fiscal year, thereby giving Congress a budgetary mechanism with which to control the huge federal outlays of this program. Essentially, reducing allocations has restricted spending levels below amounts

supportable by the Trust Fund's income (and below actual appropriations to states) for nearly 30 years. However, those favoring a return on their highway user fees argue that if current federal Highway Trust Fund receipts are not going to expand state transportation programs across the country and are simply diverted to federal deficit reduction or other non-highway uses, that a reduction of the federal gas tax may be warranted.

STATE NEEDS VS. FEDERAL PRIORITIES - A DELICATE BALANCE

One of the goals of ISTEA was to move transportation policy away from the focus on the interstate highway system to a more comprehensive approach that included funding for all modes of transportation, providing linkages within an Intermodal system. Another objective of the legislation was to provide the states with more flexibility in determining state/local transportation policy. Certainly, requirements for increased public participation in local decision-making has allowed for a much more inclusive process. Funding categories were simplified while allowing state and local governments the flexibility to shift resources for specific local or regional priorities, although certain set-aside program categories were also added. A percentage of federal funds allocated to the states are earmarked for specific set-aside programs as well as planning and research activities. Set-aside allocations cannot be transferred to other uses, such as construction.

One such set-aside program, which has been highly controversial and has received mixed reviews, is the Transportation Enhancement Program (known as the Community Transportation Enhancement Program [CTEP] in Montana). This program, which provided Montana with more than $5 million in annual spending authority over a 6-year period, is intended to fund projects of a non-traditional nature that provide for environmental enhancement. Various categories of eligible projects include: historic preservation; acquisition of scenic easements or historic sites; highway beautification; development of bikepaths; pedestrian amenities; archeological planning and research; et al. Opponents of this set-aside program, including many highway officials, have argued that critical funding is diverted away from road construction and maintenance, the primary focus of state transportation programs.

As a whole, it would appear that states are generally satisfied with the major ISTEA program categories, but, as one might guess, many would like to see greater flexibility in the use of federal funds with fewer restrictions and set-asides in addition to higher funding levels in a successor bill. By the same token, one can be sure that a national transportation policy dictates that national priorities and objectives will be factored into the funding equation.

REAUTHORIZATION: PROPOSED LEGISLATION

The following briefly summarizes proposals that have surfaced in Congress during the past year.

NEXTEA - "National Economic Crossroads Transportation Efficiency Act" - S. 468/H.R. 1268

The Administration's proposal, as introduced by Sen. Chafee (R-RI) and Rep. Shuster (R-PA), would provide an annual average of $19 billion for highway programs ($1 billion more than current level). The bill would retain most ISTEA provisions with some slight revisions to funding formulas. The proposal also eliminates the current prohibition on states placing tolls on Interstate highways.
Montana's annual average apportionment under this proposal would increase from $158.7 million (a 0.92% program share) under ISTEA to $174.5 million (or 0.87% program share) under NEXTEA.

BESTEA - "Building Efficient Surface Transportation and Equity Act" - H.R. 2400 (6-year)

This proposal was introduced by Rep. Bud Shuster (R-PA), Chairman of the House Committee on Transportation & Infrastructure. Due to concerns that the increased funding levels proposed in the bill would bust the balanced budget agreement, the bill was essentially tabled by the House leadership. Although the total amount of federal-aid highway funds over the 6-year period would increase under this proposal, Montana's annual percentage share of program dollars would be reduced to 0.68%, amounting to $174.7 million annually.

STEP 21 - "ISTEA Integrity Restoration Act" - S. 335/H.R. 674

This bill, sponsored by the donor states and introduced by Sen. Warner (R-VA) and Rep. DeLay (R-TX), is being supported by state DOT's that have been critical of ISTEA's multimodal and locally controlled focus. Donor states support this legislation that would change the current funding formula, providing increased federal funds to donor states. For example, the bill would allocate 40% of the federal funds based on: vehicle miles traveled, lane miles, and diesel fuel consumption; and 60% would be based upon actual contributions to the Highway Trust Fund. Supporters of this bill argue for a needs-based funding formula and one which is less driven by historical appropriations. The bill would guarantee each state a 95% return on its contributions to the Highway Trust Fund.

ISTEA Reauthorization Act - "ISTEA Works" - S. 586/H.R. 1609

This proposal, sponsored by a coalition of Northeastern and mid-Atlantic donee states who are satisfied with the current policy and programs of ISTEA, would essentially

retain the current law and its distribution formula.

STARS 2000 - "Surface Transportation Authorization and Regulatory Streamlining Act", S. 532

This bill, introduced by Sen. Max Baucus, has been endorsed by state officials from western states (including ID, WY, ND, SD, NE, IA, KS, and NM). The bill provides increased funding for western/mountain and rural states. As Ranking Minority member of the Senate Committee on Environment & Public Works (EPW), Senator Baucus worked with Montana Department of Transportation officials who provided technical assistance in the development of this legislation. The legislation recommends replacing ISTEA with a two-tier highway program consisting of the National Highway System and a Surface Transportation block grant program, giving states added flexibility.

ISTEA II - "Intermodal Transportation Act" - S. 1173

A compromise bill emerged out of the Senate EPW Committee which, if passed, would be a boon for states as it increases the total pot of funds available for surface transportation programs to $145 billion, a 20% increase over ISTEA levels. Montana's average annual apportionment under this proposal would increase to $233 million annually (a 1.06% share of program funds). This bill is currently being supported by the Montana delegation. As well, the proposal was constructed within the parameters of the budget agreement. Highlights of the bill include: a guarantee of a 90% return of state Highway Trust Fund contributions; a 25 percent increase in set-aside funds for transportation enhancement activities, including funds for natural habitat enhancement; and a reduction of the number of major program categories from 5 to 3 by incorporating the Bridge Program and Interstate Program into the National Highway System and Surface Transportation Program.

CONCLUSION

Although it would appear that major changes in current federal transportation policy are not likely, it is still unclear what level of federal transportation funds the states can expect over the course of the next five or six years. For Montana, current possibilities include an annual federal-aid highway package ranging between $145 million and $233 million, compared to current level expenditures of about $155 million. Regardless of the federal funds available, the priorities of Montana's transportation policy should be well-defined and articulated in order that both policy makers and citizens can see the measurable results and benefits of this large investment of taxpayer dollars.

INTERIM CALENDAR

UNLESS OTHERWISE SPECIFIED,
ALL ROOM DESIGNATIONS ARE IN THE CAPITOL

JANUARY

January 1, New Year's Day, legal holiday

January 7, Gaming Advisory Council, Room 325, 9 a.m.

January 8, Committee on Children and Families, Room 437, 9 a.m.

January 8, EQC Growth Subcommittee

January 8, EQC Water Policy Subcommittee, Room 104, 3 p.m.

January 9, Environmental Quality Council, Room 104

January 15, Committee on Indian Affairs, Room 108, 9 a.m.

January 15, Committee on Public Employee Retirement Systems, Room 104, 1:30 p.m.

January 16, Legislative Council, Room 104

January 16, Legislative Audit Committee, Room 437

January 16, Transitional Advisory Committee PSC Liaison Subcommittee

January 20, Committee on State Management Systems

January 22, Correctional Standards and Oversight Committee, Boulder

January 23, Correctional Standards and Oversight Committee, Helena

January 26, Transportation Funding Study Committee, Room 104

January 27, Subcommittee on Welfare and Child Support Enforcement Programs, Room 104, 8 a.m.

January 28-29, Interim Property Tax Committee, Yogo Inn, Lewistown

January 30, Revenue Oversight Committee

FEBRUARY

February 5, Transitional Advisory Committee USBP Subcommittee, Missoula

February 6, Transitional Advisory Committee, Holiday Inn, Missoula

February 9, Interim Property Tax Committee, Billings

MARCH

March 2, Postsecondary Education Policy and Budget Committee, 9 a.m.

March 11, Subcommittee on Welfare and Child Support Enforcement Programs, Room 104

March 12, LFC Subcommittee on Earmarked Revenues and Statutory Appropriations

March 12-13, Legislative Finance Committee, Room 104

370 copies of this public document were published at an estimated cost of 70¢ per copy, for a total cost of $259.00, which includes $180.00 for printing and $79.00 for distribution.

Legislative Services Division
Room 138, State Capitol
P.O. Box 201706
Helena MT 59620-1706